



# BiH Dayton Project



## Outgoing high representative attempts to rewrite the Dayton Accords

 July 26, 2021

Outgoing High Representative Valentin Inzko has caused considerable political and diplomatic turmoil in Bosnia and Herzegovina (BiH) with his audacious attempt to single handedly rewrite the terms of a multilateral treaty.

On Friday, Mr. Inzko, an unelected foreign diplomat winding up the last days of his tenure, unilaterally decreed a law that would criminalize public disagreement with final court decisions on genocide, crimes against humanity, or war crimes.

The 1995 Dayton Accords—arguably the most important and successful international peace treaty signed in the last 40 years—were negotiated over many months by many of the world's most thoughtful and experienced diplomats and jurists.

In the course of those negotiations, a Constitution was crafted and agreed as Annex 4 of the Dayton Accords. This Constitution explicitly guarantees all BiH citizens the right to freedom of expression, as most modern constitutions do. In addition, the Constitution incorporates the protections of the European Convention on Human Rights, which also guarantees the right to freedom of expression.

This carefully negotiated Constitution, moreover, establishes a democratic system in which legislation must be approved by both chambers of the BiH Parliamentary Assembly in order to become law.

Mr. Inzko, who must think himself wiser than those who carefully negotiated the Dayton Accords, brazenly ignored the BiH Constitution in attempting to impose his own law in plain violation of both the substantive and procedural protections agreed at Dayton.

Mr. Inzko's measure is an outrageous, defiant repudiation of freedom of expression in BiH, a right clearly confirmed by the case law of the European Court of Human Rights. That court, for example, held in 2015 that Switzerland's prosecution of a politician for denying the occurrence of the Armenian genocide violated the politician's freedom of expression. The court explained that freedom of expression applies "not only to 'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb."

If the right to free expression under the BiH Constitution and the European Convention on Human Rights means anything, it must include the right to criticize a public authority. That right would be an empty fraud if it permitted an individual to be imprisoned for disagreeing with a decision of a court or other public organ. Yet that is what Mr. Inzko's ill-conceived measure would do.

Mr. Inzko must not be allowed to rewrite the Dayton Accords by negating BiH's democratic legislative system and eliminating its constitutional protection of freedom of expression.

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